

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BERNARD E. SMITH,

Petitioner,

v.

Civil Action No. 2:07cv20

UNITED STATES PAROLE COMMISSION,

Respondent.

ORDER

It will be recalled that on February 29, 2008, Magistrate Judge Kaul filed his Report and Recommendation, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On March 12, 2008, the Petitioner filed his Motion in Opposition to Opinion/Report Filed 2/29/2008 and Objections of Petitioner to the Opinion/Report and Recommendation.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition For Writ of Habeas Corpus and Motion for Writ of Assistance, filed pursuant to 28 U.S.C. § 2241, wherein Petitioner alleges that the Parole Commission has unfairly denied him parole release, were thoroughly considered by Magistrate Judge Kaul in his Report and Recommendation. Upon consideration of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not thoroughly considered by the Magistrate Judge in his Report and Recommendation. More particularly, the Court is not required to, and rarely does, stay a case pending ruling in another case. Further, as

found by the Magistrate Judge in his Report and Recommendation, this Court does not have the authority to grant the Petitioner relief absent an alleged constitutional violation or other defect in the proceedings, which the Petitioner has not alleged. Therefore, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of as recommended by the Magistrate Judge. Accordingly, it is hereby

ORDERED that the Petitioner's Motion for Enlargement of Time to File an Amended Petition shall be, and the same hereby is, **DENIED**. It is further

ORDERED that the Petitioner's §2241 petition and Motion for Writ of Assistance shall be, and the same hereby are, **DENIED**. It is further

ORDERED that the above-styled civil action shall be, and the same hereby is, **DISMISSED** with prejudice and stricken from the docket of this Court. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4, Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the

alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a), Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: July 21st, 2008

A handwritten signature in black ink, appearing to read "Robert E. Mahoney", written over a horizontal line.

United States District Judge